

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Nachum Zager
Plaintiff/Appellant

vs.

Capital One Bank USA NA and Richard D. Fairbanks
Defendant/Appellee
-----X

NOTICE OF APPEAL
Index No. 09-CV 7019 (KMK)

PLEASE TAKE NOTICE that Joshua N. Bleichman, attorney for the Plaintiff/appellant, hereby appeals, to the United States Court of Appeals for the Second Circuit, United States Courthouse, 40 Foley Square, New York, NY, from the Orders of the Honorable Kenneth M. Karas, District Court Judge of the Southern District of New York, dated April 29, 2010 and May 7, 2010 and entered in the office of the Clerk of Court on May 7, 2010 and from each and every part thereof.

Dated: May 28, 2010
Spring Valley, NY 10977

/s/ Joshua N. Bleichman
Joshua N. Bleichman
Attorney for Plaintiff Appellant
268 West Route 59
Spring Valley, NY 10977
845-425-2510

CERTIFICATE OF SERVICE

I Joshua N. Bleichman, affirms under the penalties of perjury that I am not a party to this action and I am over the age of 18 years old. I have offices at 268 West Route 59, Spring Valley, NY 10977. I served the within Notice of Appeal together with the Order appealed from and Appellants designation of the Record on the May 28, 2010 by depositing a true copy thereof in a post-paid wrapper, placing it in an official depository under the exclusive care and custody of the US Postal Service within the State of New York, first class mail, addressed to:

Casey Laffey, Reed Smith,
599 Lexington Ave ,
NY, NY 10022-7650

Dated: May 28, 2010

/s/ Joshua N. Bleichman
Joshua N. Bleichman
Attorney for Plaintiff Appellant
268 West Route 59
Spring Valley, NY 10977
845-425-2510

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Index No. 09-CV 7019 (KMK)

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APPELLANT'S DESIGNATION OF RECORD AND STATEMENT OF ISSUES

Appellant having filed a notice of appeal dated May 28, 2010 from Orders of the Honorable Kenneth M. Karas, District Court Judge of the Southern District of New York, dated April 29, 2010 and May 7, 2010 and entered in the office of the Clerk of Court on May 7, 2010 and from each and every part thereof hereby designates the following for inclusion in the record on appeal and sets forth a statement of issues to be presented on appeal.

Designation of Contents of Record

1. Entire File maintained for the case 09-CV 7019 (KMK) by the Clerk of the District Court.

Issues Presented

1. Whether the Judge erred and/or abused discretion in dismissing the case?
2. Whether the Judge erred and/or abused discretion in sanctioning Joshua N. Bleichman in the amount of \$1,406 00?

Dated: May 28, 2010
Spring Valley, NY 10977

_____/s/ Joshua N. Bleichman
Joshua N. Bleichman
Attorney for Plaintiff Appellant
268 West Route 59
Spring Valley, NY 10977
845-425-2510

Karas, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NACHUM ZAGER,

No. 09 Civ 7019 (KMK)

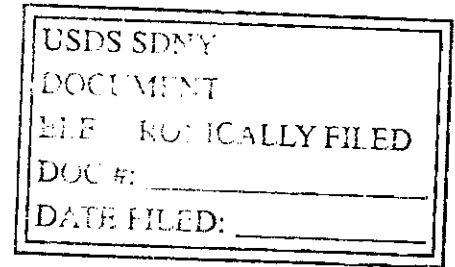
Plaintiff,

v

CAPITAL ONE BANK USA, N.A. and
RICHARD D. FAIRBANKS

Defendants.

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PROPOSED ORDER

WHEREAS on April 15, 2010 a conference (hereinafter referred to as "April 15th Conference") was held before the Honorable Kenneth M. Karas at the United States District Court for the Southern District of New York at 3:30pm at which time Plaintiff's counsel, Mr. Joshua N. Bleichman ("Plaintiff's counsel" or "Mr. Bleichman"), failed to appear; and

WHEREAS on April 16, 2010, Plaintiff's counsel, Mr. Bleichman was ordered to show cause by April 20, 2010 why the above entitled action should not be dismissed for failure to prosecute, and why Mr. Bleichman should not be required to pay the legal fees that Defendants incurred in having their counsel attend the April 15th Conference; and

WHEREAS Plaintiff's counsel failed to show cause by April 20, 2010; and

WHEREAS on April 29, 2010, the above entitled action was dismissed without prejudice for failure to prosecute; and

WHEREAS on April 29, 2010, it was further ordered that Mr. Bleichman be sanctioned in the amount defendants Capital One Bank USA, N.A. and Richard D. Fairbanks ("Defendants") paid their counsel to appear at the April 15th Conference; and

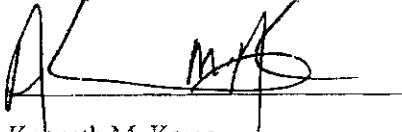
WHEREAS, an appropriate showing having been made with supporting back-up documentation as to the amount Defendants paid their counsel to appear at the April 15th Conference; it is hereby

ORDERED that the above entitled action is DISMISSED without prejudice for failure to prosecute, and it is further

ORDERED that Mr. Bleichman be sanctioned in the amount of \$1,406.00, the amount Defendants paid their counsel to appear at the April 15th Conference, and it is further

ORDERED that Plaintiff's counsel tender payment of that amount to Defendants c/o Reed Smith LLP, 599 Lexington Avenue, 22nd Floor, New York, NY 10022, Attn: Casey D. Laffey, Esq. within ten (10) days of this order

SO ORDERED:



Kenneth M. Karas
United States District Judge

DATED 5/7/10